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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK BLACKSHIRE,
Plaintiff,
v.
SACRAMENTO COUNTY SHERIFF,
Defendant.

No. 2:15-cv-1123 MCE CKD PS

ORDER

Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has filed a second amended complaint.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

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1 In order to avoid dismissal for failure to state a claim a complaint must contain more than
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
3 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
5 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim
6 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
8 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
9 at 1949. When considering whether a complaint states a claim upon which relief can be granted,
10 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
11 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
12 U.S. 232, 236 (1974).

13 The court finds the allegations in plaintiff’s second amended complaint so vague and
14 conclusory that it is unable to determine whether the current action is frivolous or fails to state a
15 claim for relief. Although the three line document filed by plaintiff is short, it does not set forth a
16 plain statement of plaintiff’s claim as required by Fed. R. Civ. P. 8(a)(2). Although the Federal
17 Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of
18 the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th
19 Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which
20 defendants engaged in that support plaintiff’s claim. Id. Because plaintiff has failed to comply
21 with the requirements of Fed. R. Civ. P. 8(a)(2), the second amended complaint must be
22 dismissed. The court will, however, grant leave to file a third amended complaint.

23 If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional
24 grounds upon which the court’s jurisdiction depends. Federal Rule of Civil Procedure 8(a).
25 Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation
26 of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

27 It appears that plaintiff may be trying to state a claim for violation of his civil rights.
28 Plaintiff is advised that the Civil Rights Act provides as follows:

1 Every person who, under color of [state law] . . . subjects, or causes
2 to be subjected, any citizen of the United States . . . to the
3 deprivation of any rights, privileges, or immunities secured by the
4 Constitution . . . shall be liable to the party injured in an action at
5 law, suit in equity, or other proper proceeding for redress.

6 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
7 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
8 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
9 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
10 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
11 omits to perform an act which he is legally required to do that causes the deprivation of which
12 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

13 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
14 their employees under a theory of respondeat superior and, therefore, when a named defendant
15 holds a supervisory position, the causal link between him and the claimed constitutional
16 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
17 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). Vague
18 and conclusory allegations concerning the involvement of official personnel in civil rights
19 violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

20 Plaintiff named as a defendant the Sacramento County Sheriff in the original complaint.
21 The second amended complaint does not even allege a name of a defendant and does not state
22 whether any defendant is sued in their individual or official capacity. In the present state of
23 pleadings, the court cannot discern whether plaintiff is attempting to state a claim against the
24 County of Sacramento or the Sheriff of Sacramento County in his individual or official capacity.
25 To state a claim against the County, plaintiff must set forth facts alleging that local government
26 officials have intentionally violated plaintiff's constitutional rights, the violation was part of
27 policy or custom and was not an isolated incident, and that there is a link between the specific
28 policy or custom to the plaintiff's injury. See Monell, 436 U.S. at 690-92. Moreover, plaintiff
fails to set forth any facts showing that he was entitled to be released on a certain date and the

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1 circumstances under which he was allegedly belatedly released. See generally Brass v. County of
2 Los Angeles, 328 F.3d 1192 (9th Cir. 2003).

3 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
4 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
5 complaint be complete in itself without reference to any prior pleading. This is because, as a
6 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
7 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
8 longer serves any function in the case. Therefore, in an amended complaint, as in an
9 original complaint, each claim and the involvement of each defendant must be sufficiently
10 alleged.

11 In accordance with the above, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's second amended complaint is dismissed; and
- 13 2. Plaintiff is granted thirty days from the date of service of this order to file a third
14 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,
15 and the Local Rules of Practice; the third amended complaint must bear the docket number
16 assigned this case and must be labeled "Third Amended Complaint"; plaintiff must file an
17 original and two copies of the third amended complaint; failure to file a third amended complaint
18 in accordance with this order will result in a recommendation that this action be dismissed.

19 Dated: July 8, 2015

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22 CAROLYN K. DELANEY
23 UNITED STATES MAGISTRATE JUDGE

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